

November 1996

WEST VIRGINIA INFORMATIONAL LETTER

NO. 101

**TO: ALL PROPERTY AND CASUALTY INSURANCE COMPANIES
LICENSED TO DO BUSINESS IN THE STATE OF WEST VIRGINIA**

**RE: PUNITIVE DAMAGES EXCLUSIONS IN PERSONAL LINES LIABILITY
INSURANCE POLICIES**

The purpose of this informational letter is to place interested parties on notice that effective immediately, no personal lines liability policies containing exclusions for the payment of punitive damages arising from gross, reckless or wanton negligence will be approved for use in this State. In accordance with the provisions of W. Va. Code § 33-6-9(f), the Commissioner is withdrawing previous approval of all personal lines policies containing punitive damages exclusions. The coverages provided in such policies are deemed to be "not sufficiently broad to be in the public interest." As such, all insurers currently having personal lines policies in place containing exclusions for punitive damages must submit new policies or amendments to current policies to this Office for approval no later than **December 31, 1996**. Submissions for approval should be submitted to the Rates and Forms Division in accordance with the provisions of W. Va. Code § 33-6-8.

In reaching this position, this Office considered Hensley v. Erie Ins. Co., 283 S.E.2d 227 (W. Va. 1981), in which the West Virginia Supreme Court held that the public policy of this State does not preclude insurance coverage for punitive damages arising from gross, reckless or wanton negligence. In refusing to adopt the position that the sole purpose of punitive damages is to deter and punish the tortfeasor, the Supreme Court noted that "punitive damages are additional compensation for the egregious conduct that has been inflicted on the injured party." Thus, coverage for noncompensatory, as well as compensatory damages, protects those who have been injured just as it protects the insured.

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This Office also recognizes that under West Virginia law, an insurer has no duty to defend an insured in an action for, nor a duty to pay for, damages caused by a "purposeful or intentional tort." Horace Mann Ins. Co. v. Leeber, 376 S.E.2d 581 (W. Va. 1988). Therefore, while personal lines liability policies which contain exclusions for damages arising from gross, reckless or wanton negligence will not be approved for use in this State, such policies may contain "intentional injury exclusions" for damages caused intentionally or at the direction of the insured.

Inquiries regarding this letter should be directed, in writing, to Donna S. Quesenberry, Associate Counsel, Legal Division, West Virginia Insurance Commission, P.O. Box 50540, Charleston, WV 25305-0540.

Hanley C. Clark
Insurance Commissioner